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April 27, 2007

To: Supervisor Zev Yaroslavsky, Chairman  
Supervisor Gloria Molina  
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Supervisor Don Knabe  
Supervisor Michael D. Antonovich

From: David E. Janssen  
Chief Administrative Officer

**MOTION TO SUPPORT SB 670 (CORREA) – DEVELOPER FEES (ITEM NO. 17,  
AGENDA OF MAY 1, 2007)**

Item No. 17 on the May 1, 2007 Agenda is a motion by Supervisor Antonovich to support SB 670 (Correa).

Current law allows various required fees to be included in the price of a residential real estate transfer. These include public fees such as transfer taxes and document recording fees as well as private fees such as homeowner association processing fees. All of these required fees and payments must be disclosed on statutorily required forms. In addition, various types of voluntary fees, including escrow fees, title insurance premiums, and realtor commissions, as well as liens, including mechanics' liens, judgment liens, and lender liens, are all paid out of escrow.

According to the Senate Transportation and Housing Committee Analysis, a new type of fee has been employed recently: a private real estate transfer fee. Such a fee was first devised in Roseville three years ago when a project developer and the city agreed to a legal settlement with environmentalists allowing for the development of 8,400 new homes on the city's last large expanse of vacant land while preserving nearly 6,000 acres of open space. The \$85 million needed to purchase the agreed-upon open space

will come from a charge of a percentage of the sales price each time a home within the development is sold over the next 20 years. The fee goes to the private, non-profit Placer Land Trust for the purchase of the open space. These fees are required as part of the covenants (CC&Rs) recorded against the property. There are at least two other known instances in which housing developers have imposed similar private transfer fees.

As amended on April 11, 2007, SB 670 would prohibit these types of transfer fees after December 31, 2007. The bill would provide that any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of real property that contains a requirement that any transferee pay a fee upon transfer of the real property is void, unless the requirement was in effect on or before December 31, 2007. The bill would exempt from this definition taxes and fees imposed by governmental entities; court ordered transfers, payment, or judgment; mechanics' liens; property agreements in connection with a legal separation or dissolution of marriage; and fees imposed by lenders, among others.

The sponsors of the bill indicate that private transfer fees are not limited to non-profit public benefit corporations but can also be imposed for the benefit of individuals or corporations. They point to a website that encourages homeowners to record transfer fee requirements against their own properties in order to receive a share of all future sales. While such fees should be reflected in the market value of the property, there seems to be little policy rationale to allow such fees. In addition, the sponsors argue that, unlike local governments, non-profit organizations or others that receive private transfer fees are not accountable to the fee payers or to the public at large.

Opponents argue that funding community facilities and amenities is often required as part of the development process. In their view, "reconveyance financing" is a smart and equitable way to fund these facilities and amenities over time in order to avoid saddling buyers of new homes with huge up-front costs. If original homebuyers were required to pay the entire cost of required mitigation at the time of initial sale, the cost would be 10 to 20 times higher. Opponents further point out that the fees in existence to date have not deterred home sales.

The Community Development Commission and Department of Consumer Affairs reviewed SB 670 and indicated that this bill does not have any effect on them, and there is no existing policy on this issue. **Therefore, support for SB 670 is a matter for Board policy determination.**

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SB 670 is sponsored by the California Association of Realtors, and supported by over 45 Realtor Associations throughout the State. This measure is opposed by the California Building Industry Association, California League of Conservation Voters, California State Parks Foundation, Defenders of Wildlife, Orange County Community Housing Corporation, Planning and Conservation League, and Sierra Club.

SB 670 is set for hearing on May 8, 2007 in the Senate Transportation and Housing Committee.

DEJ:GK  
MAL:EW:hg

c:     Executive Officer, Board of Supervisors  
         County Counsel  
         Community Development Commission  
         Consumer Affairs